

REMARKS

Claims 1-52 are pending in the instant application. Of these, claims 14, 18, 32, 36 and 41-46 are withdrawn. Claims 1-13, 15-17, 19-31, 33-35, 37-40 and 47-52 are under consideration, and stand rejected as final. Claims 1, 19, and 51 have been amended. Applicant respectfully requests reconsideration in view of the following remarks.

Applicant respectfully submits that the amendments to the claims are fully supported by the specification as originally filed, either expressly or implicitly. See, for example, page 28, line 24 through page 29, line 7 specifically concerning the ability of the device to be joined or attached to tissue.

The claimed invention is a polymeric device that attaches to tissues and keeps them from shifting during the healing process. The device is porous, and at least some of the pores are designed to collapse upon application of a bending force to the polymeric device. In this way, the device will maintain its new shape after the bending force is removed or released. Thus, the device of the present invention can be "custom fit" to the tissues to be fixed in place.

Claim Rejections – 35 USC §102

Claims 1-13, 15-17, 19-31, 33-35, 37-40 and 47-52 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,920,203 to Tang et al. (hereinafter referred to as "Tang"). Applicant respectfully traverses this rejection.

The Action characterizes Tang as "including a resorbable, implantable biopolymer fixation device that can be fastened to tissue (see, e.g., Summary of the Invention; col. 7, lines 24-43; col. 8, lines 65-col. 9, line 2; col. 20, lines 41-62; col. 37, lines 67-68; col. 38, lines 9-10). The device is made of one or more layers of a porous material and can comprise an additional material in the form of various fillers and additives and active agents (id.)."

Even assuming *arguendo* that this characterization is completely true, Applicant respectfully submits that Tang does not anticipate the claimed invention. "TO ANTICIPATE A CLAIM, THE REFERENCE MUST TEACH EVERY ELEMENT OF THE CLAIM" (MPEP §2131). Specifically, Tang does not disclose, either expressly or implicitly, the following two elements of the claimed invention:

(1) said bending force at least partially collapsing a portion of the pores to form a radius curve

Tang is completely silent on this matter. All of the rejected claims feature this limitation because each of the independent claims contains this feature. Another characteristic of the claimed invention is:

(2) whereby said porous body inherently maintains said radius curve upon removal of the bending force

At best, Tang discloses in Example 39 that a number of extrudates of his block copolymer, coiled around, and sutured to, a Dacron vascular graft, were capable of preventing the graft from not kinking and collapsing during bending. This is desirable, but this is short of being able to say that the bent graft maintained its shape upon removal of the bending force, which is what the instant invention claims. In fact, one of the embodiments of Tang is stated as possessing elasticity (see, for example, col. 4, lines 2-14). A material that possesses elasticity normally returns to its original shape after the distorting force is removed.

Applicant furthermore notes that a vascular graft application typically is one where what is desired is for the graft to return to its original shape after the deforming force is removed. Remaining bent as the instant invention claims generally is not what is desired in a vascular graft.

Accordingly, Applicant respectfully requests that this rejection be withdrawn.

Thus, claims 1-13, 15-17, 19-31, 33-35, 37-40 and 47-52 should now be in condition for allowance.

Rejoinder

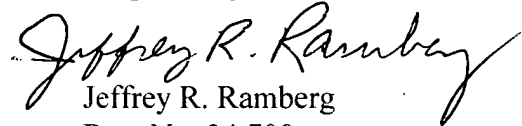
Withdrawn claims can be rejoined if they are species of an allowable genus claim. Withdrawn claims 14, 18, 32, 36 and 41-46 are either dependent from, or have been amended to include all of the limitations of independent claim 1. As Applicant respectfully submits that claim 1 is in allowable condition, and being that the withdrawn claims are a species of this allowable genus claim, the withdrawn claims therefore should be in condition for rejoinder, and such is respectfully requested.

In view of the above remarks, Applicant respectfully submits that the instant application is in condition for allowance. Accordingly, Applicant respectfully requests issuance of a Notice of Allowance directed to claims 1-13, 15-17, 19-31, 33-35, 37-40 and 47-52. Applicant furthermore requests that claims 14, 18, 32, 36 and 41-46 be rejoined.

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Should the Patent Office deem that any further action on the part of Applicant would be desirable, the Office is invited to telephone Applicant's undersigned representative.

Respectfully submitted,


Jeffrey R. Ramberg
Reg. No. 34,700

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c/o Kensey Nash Corporation
735 Pennsylvania Drive
Exton, PA 19341

Tel: (484) 713-2140
Fax: (484) 713-2909